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No. 88-2119

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

EUGENE MEYER, et al., Petitioners,
v.
TIMOTHY D. BARNES, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS TIMOTHY D. BARNES, ERNEST KON, BOBBY ROBERTSON, AND JAMES MASON, INDIVIDUALLY AND AS REPRESENTATIVES, OFFICERS AND AGENTS OF HIGHWAY, CITY, AND AIR FREIGHT DRIVERS, DOCKMEN AND HELPERS LOCAL UNION NO. 600

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LIST OF PARTIES

The parties to the proceedings below were: (a) the petitioners Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, John C. Fisher, and James T. Schmidt; (b) Eugene C. Lemke, a plaintiff in the proceeding below, who has not joined as a petitioner; (c) respondents Timothy D. Barnes, Ernest Kon, Bobby Robertson, and James Mason, individually and as representatives, officers and agents of Highway, City and Air Freight Drivers, Dockmen and Helpers Local Union No. 600, a labor union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization; and (d) Jackie Presser and Weldon Mathis, individually and as representatives, officers and agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization.

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Respondents Timothy D. Barnes, Ernest Kon, Bobby Robertson, and James Mason, individually and as representatives, officers and agents of Highway, City, and Air Freight Drivers, Dockmen and Helpers Local Union No. 600 (the "Local 600 respondents"), respectfully request this Court to deny the petition for a writ of certiorari which seeks review of the opinion of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

Although the Local 600 respondents are generally satisfied with petitioners' references to the opinions below, the Local 600 respondents would like to correct an apparent typographical error. The opinion of the United States Court of Appeals for the Eighth Circuit in this proceeding was filed in 1989 rather than in 1987.

STATUTES INVOLVED

1. **Pertinent provisions of the Labor-Management Relations Act of 1959, as amended:**

29 U.S.C. §401(a) provides:

> (a) Standards for labor-management relations
>
> The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

29 U.S.C. §402(q) provides:

> For the purposes of this chapter- . . .
>
> (q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic, and service personnel.

29 U.S.C. §501(a) provides:

(a) Duties of officers; exculpatory provisions and resolutions void

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

II. **Pertinent Provisions of the Employee Retirement Income Security Act of 1974, as amended:**

29 U.S.C. §1002(1) provides:

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

29 U.S.C. §1002(7) provides:

For purposes of this subchapter:

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

29 U.S.C. §1002(8) provides:

For purposes of this subchapter:

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is under or may become entitled to a benefit thereunder.

STATEMENT OF THE CASE

Petitioners, former officials of Highway, City and Air Freight Drivers, Dockmen, and Helpers Local Union No. 600 ("Local 600") from 1975 through 1980, seek a judgment in this case against Local 600 and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("IBT" or "the International")[1] for $166,000.00 in severance pay, equal to one month's salary for each year of employment with Local 600 for each petitioner, plus interest dating back to 1981, costs, and attorney's fees. In support of this demand, petitioners allege in their suit that the Local 600 constitution and bylaws and a resolution passed by the Local 600 executive board on February 13, 1974, constitute an employee welfare benefit plan or welfare plan for severance pay within the meaning of 29 U.S.C. §1002(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and that they (petitioners) are participants and beneficiaries pursuant to 29 U.S.C. §§1002(7) and (8) of ERISA. The district court granted summary judgment in favor of the Local 600 respondents and the IBT respondents, and the Eighth Circuit affirmed.

In 1974, the United States District Court for the Eastern District of Missouri entered judgment in excess of five million dollars in favor of the Motor Carriers Council of St. Louis, Inc., and against Local 600. As a result, Local 600 filed a voluntary petition in bankruptcy in September

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[1]Petitioners sued present Local 600 officers Timothy Barnes, Ernest Kon, Bobby Robertson, and James Mason as representatives of Local 600. Plaintiffs also sued Jackie Presser, the recently-deceased former president of the IBT, and current IBT secretary-treasurer Weldon Mathis as representatives of the International. Where distinction is necessary, the Local 600 representatives will be referred to as the "Local 600 respondents," and the International representatives will be termed the "IBT respondents." This brief is filed only on behalf of the Local 600 respondents.

of 1976. Thereafter, from November 12, 1976, to August 22, 1980, Local 600 was financially operated by a trustee in bankruptcy.

On December 8, 1976, each petitioner filed a proof of claim in the Local 600 bankruptcy proceeding in which each claimed, among other things, for amounts as severance pay computed on the basis of one month's salary for each year of employment with Local 600. They claimed entitlement to severance pay on the basis of a resolution passed by the Local 600 executive board on February 13, 1974:

> IT IS HEREBY RESOLVED by the Executive Board of Teamsters Local 600 that the severance pay policy established by this Executive Board on September 17, 1966, shall be revised and amended to provide as follows:[2]
>
> Any full time officer or business representative who shall die or terminate his employment for any reason, other than discharge for cause, or shall vacate an elected office for any reason, shall receive severance pay in an amount equal to one month's pay for each full year of service, either as an officer or business representative, with a maximum of fifteen (15) months' pay. Severance pay shall be computed at the rate of compensation of the officer of business representative at the time of his death, termination or vacation of office.

In March of 1979, the bankruptcy court ruled that Local 600's debt to the Motor Carriers Council was not dischargeable in bankruptcy. During the fall of 1979, Local 600

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[2]The minutes for the Local 600 executive board meeting for September 17, 1966, set forth the following: "Motioned by brother Capps that if any full time agent or officer who should leave his office or die, he shall receive one week's severance pay for each year of service with the union up to ten (10) years."

and the Motor Carriers Council entered into a "Memorandum of Proposed Agreement" which formed the basis of a comprehensive settlement concerning Local 600's creditors in bankruptcy. The bankruptcy court authorized the trustee in bankruptcy to enter into the agreement on October 31, 1979.

Pursuant to this agreement, the Motor Carriers Council agreed to accept 3.5 million dollars in the form of monthly payments from Local 600, with the payments to be computed as a percentage of Local 600's membership dues income. At the option of the Motor Carriers Council, default in the timely payment of any monthly installment could result in the acceleration of the entire amount due, which then totaled, with interest, over seven million dollars.

Also as part of the comprehensive settlement and pursuant to stiplation between Local 600 and the bankruptcy trustee, Local 600 agreed to obtain written waivers from all (then) present officers, business representatives and employees of Local 600 who had filed claims in the bankruptcy proceeding. Thus, on March 31, 1980, each petitioner filed with the bankruptcy court a signed, notarized waiver which stated:

> The undersigned hereby waives and relinquishes any and all claims, right and/or interest which the undersigned has, has had or may have under or by virtue of Claim No. ..... filed in the within-styled proceeding and further waives any and all right to receive a distribution from the above-captioned bankruptcy estate.

The bankruptcy court granted Local 600 a general discharge in bankruptcy on August 22, 1980, and released Local 600 from all dischargeable debts. However, the Motor Carriers Council judgment survived since it had been ruled to be non-dischargeable.

On December 8, 1980, less than five months after Local 600 had been discharged in bankruptcy, petitioners Theodore Welch, John Fisher and James Schmidt, as well as two Welch administration trustees, were defeated in their bid for reelection to union office.[3] After the Local 600 election results were announced, the Welch Local 600 executive board met that same evening and voted to approve payment of over $144,000.00 in vacation pay to all officers, business representatives and organizers of Local 600. Checks totaling this amount were cut that evening, although there were not sufficient funds in the Local 600 checking account to cover the checks. Pursuant to an arrangement with Local 600's bank, $200,000.00 in certificates of deposit were used to cover the vacation checks.

On December 19, 1980, the Local 600 executive board approved the following resolution:

> Be it resolved that the Officers and Business Representatives of Teamsters Local 600 be entitled to severance pay in the amount as set forth per Executive Board Meeting of February 13, 1974, a copy of said minutes and resolution being attached here to and incorporated herein;
>
> And be it further resolved that in the event Local 600 disputes the claims for severance pay, and it is determined that Local 600 is liable, then any and all

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[3]Although petitioner Thomas Knox was reelected to his part-time position as union trustee, he was subject to removal from his full-time position as business agent and organizer by the newly-elected Local 600 president. Pursuant to the Local 600 constitution and bylaws, the new president, upon assuming office, removed petitioner Knox as well as petitioners Eugene Meyer and Thomas Welch from their business agent positions. However, between the time of the Local 600 election of officers on December 8, 1980, and the time the newly-elected officials took office on January 1, 1981, petitioners Theodore Welch, Fisher, Schmidt, and Knox comprised a majority of the seven-person Local 600 executive board.

attorney's fees incurred by officers and/or business representatives in obtaining said severance pay shall be assessed against Local 600.

Under this formula, severance pay to outgoing officers, business agents and organizers would have totaled over $270,000.00. As is reflected on the Local 600 Trustees Report for December 1980, this amount exceeded the total assets of Local 600. Additionally, at the end of 1980, Local 600 still owed the Motor Carriers Council $1,749,697.60.

In February of 1981, the new executive board held a hearing on the severance pay demand of petitioners and others and denied the demand. No Local 600 officer or business agent has received any severance pay from Local 600 since the union filed its petition in bankruptcy.[4] Of the 22 Local 600 officers and agents who received amounts as severance pay between 1966 and 1976, all but three people who left office in 1974 received severance pay based on a formula of one week's pay for each year of service. Effective January 1, 1984, the revised Local 600 constitution and bylaws specifically prohibits the payment of severance pay to any officers, agents or employees.[5]

The parties stipulated that Local 600 is bound by the IBT constitution. Article VI, Section 4(b) of that constitution provides:

> Local Unions shall not adopt Bylaws or take any action which would impair their ability to meet their financial obligations to the International Union and its subordinate bodies or interfere with the discharge

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[4]In fact, a severance payment in early 1976 to the widow of a business agent who died in office is the only severance payment which Local 600 has made to an officer or business agent since the Motor Carriers Council judgment was affirmed on appeal.

[5]Prior to 1984, severance pay was not mentioned in the Local 600 constitution and bylaws.

of their obligations to their members in the negotiation and administration of collective bargaining agreements and in conducting the affairs of the Local Union as a solvent organization.

The parties also stipulated that Local 600's financial situation from 1981 to 1986 was as follows:

	Debt to Motor Carriers Council	Overall Financial Deficit
1981	$1,433,556.60	$1,410,109.00
1982	1,164,570.75	1,175,878.00
1983	932,977.85	918,896.00
1984	715,921.85	625,754.00
1985	518,733.70	486,268.00
1986	333,252.52	262,953.00

	Paid to Motor Carriers Council	Per Capita Taxes Paid to IBT and Affiliates
1981	$250,302.40	$259,074.80
1982	268,985.85	263,732.05
1983	231,592.90	252,554.76
1984	217,056.00	249,457.30
1985	197,188.15	230,293.90
1986	185,481.18	233,240.15

During the first ten months of 1987, the beginning and ending balances of Local 600's regular checking account fluctuated between a high of only $14,875.16 to a low of negative $19,962.49. Also during this time period, Local 600 continued to make average monthly Motor Carriers payments of over $16,000.00 per month and paid monthly per capita taxes of between $13,506.15 and $20,338.00.

Since the severance pay vote on December 19, 1980, there has never been enough money in the Local 600 treasury to pay petitioners and their associates severance pay in the amounts voted. Further, in the professional

opinion of Local 600's certified public accountant, based upon his certified public accounting firm's annual financial audits of the books and records of Local 600 for the fiscal years ending December 31, 1980, 1981, 1982, 1983, 1984, 1985 and 1986,[6] payment by Local 600 of the severance pay amounts sought in this suit, or of a major portion thereof, could not have been made in December of 1980 or at any time since then through the present without putting Local 600 into a financial position in which the union could not pay its lawful debts and obligations as such debts and obligations became due, and thus bankrupting the Local 600 treasury.

The district court granted summary judgment in favor of the Local 600 respondents and the IBT respondents on the gounds that the IBT constitution plainly prohibited petitioners from bankrupting Local 600, that petitioners had violated the quoted provision of the IBT constitution in purporting to authorize severance pay for themselves in December of 1980, and that granting petitioners' request for severance pay would bankrupt Local 600. Affirming, the Eighth Circuit also found that the resolution of December 19, 1980, purporting to authorize severance pay, and petitioners' subsequent demand for severance payment interfered with Local 600's ability to operate as a solvent organization, in violation of the IBT Constitution. The court of appeals further held that, although severance benefit plans are welfare plans under ERISA, petitioners had not established that Local 600 implemented a severance benefit plan.

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[6]At the time this case was taken under submission by the district court, the audit of the Local 600 books for the 1987 fiscal year had not been completed.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. Neither the decision below nor the record supports the Question Presented in the petition.

The sole Question Presented in the petition is whether "a labor union severance pay plan, reaffirmed after bankruptcy of the local union, [is] subject to the provisions of the Employment [sic] Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001, **et seq.**" (Petition, p. i.) However, the Eighth Circuit did not decide that question in this case. Additionally, the facts of record will not support a determination of that question by this Court.

Petitioners pled this case as an ERISA case. They alleged in their suit that the Local 600 constitution and bylaws and a Local 600 executive board resolution passed in 1974 constitute an employee welfare benefit plan or welfare plan for severance pay within the meaning of 29 U.S.C. §1002(1) of ERISA. Petitioners further alleged in their suit that they are participants and beneficiaries pursuant to 29 U.S.C. §§1002(7)(8) of ERISA.

Respondents have not suggested, and the courts below did not find, that petitioners' claims are not subject to ERISA. The Eighth Circuit, citing **Simmons v. Diamond Shamrock Corp.,** 844 F.2d 517, 520 n. 4 (8th Cir. 1988),[7] specificially stated that severance benefit plans are welfare benefit plans under ERISA. However, the Eighth Circuit

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[7]As support for the finding that "[c]ourts have uniformly held that unfunded severance pay plans are an 'employee welfare benefit plan' covered by ERISA," the **Simmons** court cited **Holland v. Burlington Indus., Inc.,** 772 F.2d 1140 (4th Cir. 1985), which was summarily affirmed by this Court **sub nom. Brooks v. Burlington Indus., Inc.,** 477 U.S. 901 (1986).

held that petitioners had not established that Local 600 implemented a severance benefit plan. Petitioners have not asked this Court to review this finding.[8]

Additionally, the facts of record in this case will not support the formulation or the resolution of the Question Presented by petitioners. The Question Presented presumes the existence of a plan which was reaffirmed after the Local 600 bankruptcy. However, the Eighth Circuit specifically held that petitioners' attempt to authorize the amounts of severance pay for themselves in December of 1980 and their subsequent demand for payment violated the IBT constitution.[9] Petitioners' endeavors to create an entitlement to severance pay were thus void and of no effect, and, therefore, no severance pay plan was ever reaffirmed after Local 600's bankruptcy.

Quite simply, petitioners alleged a case under ERISA. Since respondents did not challenge petitioners' right to attempt to state their claims under ERISA, the Eighth Circuit was not presented with any controversy concerning the applicability of ERISA. However, the Eighth Circuit did determine that petitioners had violated the IBT constitution in attempting to authorize the severance pay for themselves. The fact that their case presented ERISA claims did nothing to assist them in overcoming their factual hurdles and in satisfying their burden of proof. Since the Eighth Circuit was not presented with, and thus did not decide, the sole

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[8]Although petitioners allege that the parties stipulated to the actual existence of a plan, this is not correct. The parties stipulated to the 22 severance payments that were made by Local 600 to officers and business agents between 1966 and 1976. Respondents never stipulated to, and vehemently contested, the existence of any severance plan under which petitioners would be entitled to the claimed severance pay.

[9]Significantly, petitioners also do not ask this Court to review this holding.

Question Presented in the petition, no reason exists for the grant of certiorari.

II. The decision below is correct and raises no issues of conflict or importance warranting review by this Court.

The facts of record demonstrate both the correctness of the Eighth Circuit's decision and the uniqueness of this case. For these additional reasons, the Local 600 respondents respectfully suggest that no purpose would be served by granting certiorari herein.

The central reality of this case is inescapable: after having been defeated in the 1980 election but while still in office, petitioners sought to gut the union treasury for their own benefit. Their rapacious greed was matched only by their utter contempt for the welfare of Local 600.

The propriety and legality of the actions of union officials is determined by the union's constitution and bylaws and by the provisions of the Labor Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §401, **et seq.** As the Eighth Circuit held, petitioners' conduct plainly violated the provisions of the IBT constitution prohibiting a local union from taking any action which would impair its ability to conduct its affairs as a solvent organization. The Local 600 respondents further suggest that, apart from the Eighth Circuit's focus on the IBT constitutional limitations, petitioners exceeded the fair range of reasonableness accorded union officials by the LMRDA and violated their federally-imposed fiduciary duties to put their obligations to the union and its members ahead of any personal interest or gain. **See, Johnson v. Nelson,** 325 F.2d 646 (8th Cir. 1963); **Morrissey v. Curran,** 650 F.2d 1267 (2nd Cir. 1981); **Brink v. DaLesio,** 667 F.2d 420 (4th Cir. 1982).

Petitioners object to the Eighth Circuit's decision, however, on the grounds that the court of appeals affirmed the district court "on theories resting on common law prin-

ciples." (Petition, p. 5.) This argument ignores the fact that the Eighth Circuit acknowledged the ERISA basis of petitioners' claims, but held that petitioners had not established that Local 600 had implemented a severance benefit plan. Contrary to petitioners' implications, the Eighth Circuit did not exempt an unfunded union severance pay plan from civil action under ERISA or place an additional burden on petitioners "by imputing a 'bad boy' clause to the ERISA statute." (Petition pp. 5-6.) Rather, the Eighth Circuit told petitioners they had not satisfied an essential element of their burden of proof.

Even if petitioners had succeeded in establishing that Local 600 had implemented a severance benefit plan, the facts of record would still have required a decision denying petitioners severance pay. Considering Local 600's financial plight, the Local 600 respondents submit that they acted reasonably and properly in refusing petitioners' extravagant severance pay demands. However, petitioners completely failed to argue to the Eighth Circuit that the Local 600 respondents had acted arbitrarily, capriciously, or in bad faith, which is a showing petitioners would have had to have made in order to have obtained the reversal of the Local 600 executive board decision denying them severance pay. **See, Short v. Central States, Southeast and Southwest Areas Pension Fund,** 729 F.2d 567, 571 (8th Cir. 1984).

Petitioners have failed to direct the Court's attention to any decision alleged to be in conflict with the Eighth Circuit's decision here. Petitioners have also failed to explain the significance of the unique facts of this case to matters beyond the instant circumstances. Petitioners attempt to argue that:

> [b]y reversing the Eighth Circuit and permitting a trial on the merits, this Court will substantially enhance the body of federal common law relating to unfunded welfare benefit plans and the rights and remedies of

union officers and agents who are integral components of interstate commerce in this nation.

(Petition, p. 6.) However, without identifying any genuine issues of material fact, this claim merely evidences a misperception of this Court's pronouncements on the propriety of summary judgment. **See, Anderson v. Liberty Lobby, Inc.,** 477 U.S. 242 (1986); **Matsushita Electric Industrial Co. v. Zenith Radio Corp.,** 475 U.S. 574 (1986). This is simply a case of a failure of proof which does not warrant this Court's review.

CONCLUSION

For these reasons, Respondents Barnes, Kon, Robertson and Mason respectfully request the Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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